IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4095 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?No

PARU KUMARI HOKAJI PRAJAPATI

Versus

CHHAGANLAL SHANKARLAL

Appearance:

MR. TIRMIZI, for M/S THAKKAR ASSOC. for Petitioner

PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE R.R.JAIN

Date of decision: 23/04/97

ORAL JUDGEMENT

Vide this application, the petitioner has prayed for recalling the order passed by this court on 6.5.1996 in Miscellaneous Criminal Application No.1277 of 1995 filed by respondent No.1 under Section 482 of the Criminal Procedure Code, 1973 (the Cr.PC for brief) for

quashing the complaint, M. Case No.2 of 1996. While praying for recalling of the judgment delivered by this court on 6.5.1996, the petitioner has contended that the matter was taken up for final disposal though was not notified and thus it amounts to clerical mistake of the Department and thus the court can alter the judgment under Section 362 of the Cr.PC. Mr.Tirmizi for the petitioner has also argued that this petition is filed under Section 362 read with Section 482 of the Cr.PC and even in exercise of inherent powers and for doing substantial justice the court can review its own judgment.

2. Except Section 362 of the Cr.PC, I do not find any provision whereby the court can review and alter its own judgment in a criminal matter. As provided under Section 362, after signing the judgment, the court can alter or review only for a limited purpose of correcting a clerical or arithmetical error. Except what is stated above, Mr.Tirmizi for the petitioner has not been able to point out from the judgment any clerical or arithmetical error. Correction of clerical or arithmetical error means a mistake pertaining to calculation, computation, addition or deduction which is apparent on the face of record and has been reflected in the judgment. Any mistake, if at all, in notifying the matter is an administrative lapse and is not at all a clerical mistake referred in the section. In this view of the fact, I am of the opinion that this court while exercising criminal jurisdiction have no powers to review its own judgment delivered on merits except as provided under Sec. 362 of the Cr.PC.

3. It is true that the judgment has been delivered on merits but without hearing the Advocate of the petitioner. The circumstances leading to this event have been referred by this court in para 1 of the judgment which clearly reflect about gross negligence on the part of the advocate. It is not the case that the advocate on record was not aware of the adjourned date. Even in the petition also, this fact is admitted that initially the matter was notified on 30.4.1996 and was adjourned for hearing on 6.5.1996 at the request of the advocate of this petitioner. If in a given case the advocate is aware about the adjourned date, prudence requires that the advocate should and is duty bound to attend the court and keep a track of the matter on the adjourned date. This is a lame excuse and contrary to practice in vogue qua the matters for final hearing. Even if the contention is taken at its face value is not supported by any affidavit of advocate on record. Hence the statement

of the petitioner on this count cannot be accepted.

4. Relying upon the judgment of this court delivered in Criminal Miscellaneous Application No.5068 of 1995 in Criminal Revision Application No.192 of 1994 (Coram: D.G.Karia, J.), Mr.Tirmizi has vehemently argued that, in order to do substantial justice this court has got inherent powers under Section 482 of the Cr.PC to review or alter its own judgment. I have gone through the judgment. The court did consider the scope of Section 362 of the Cr.PC and held that it cannot alter or review its judgment except to correct clerical or arithmetical error, and as such review of its own judgment would not be permissible. However, while dealing with the scope of Section 482 of the Cr.PC. the court has held that to do substantial justice inherent powers can be invoked and judgment can be reviewed. The court has also observed that such inherent powers can be exercised in rarest of rare cases. Mr.Tirmizi for the petitioner has not been able to satisfy this court so as to bring this case within the parameters of the "rarest of rare cases". Under these circumstances, on facts, the view taken by brother Judge D.G.Karia cannot be applied to this case to review the judgment. It is true that in that case by exercising inherent powers under Section 482 of the Cr.PC, the court reviewed its own judgment and converted conviction into acquittal. While doing so, the court relied upon some documents though in existence on the date of judgment but were not placed before the court for consideration, as a result of which the judgment resulted into conviction. Had the same been brought to the notice the judgment would have been of acquittal. Thus the question of liberty was involved as some one was convicted and put behind bars without any justification. Thus, for doing substantial justice the court altered the judgment of conviction to that of acquittal. In that case, on facts, were such that the person could not have been convicted but for the mistake. Liberty of the accused was snatched away only because of inadvertence on the part of the advocate who was not able to bring to the notice of the court material and relevant evidence going to the root of the case. Therefore, treating as rare case, the court thought it fit and proper to exercise inherent powers and altered the judgment. In the case in hand, there is no question of deprivation of liberty of any person. Consequently, on facts, the ratio cannot be made applicable to this case.

5. In the result, I hold that the application is not maintainable and is hereby rejected.

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